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April 8, 1992

BY HAND DELIVERY

Ms. Donna R. Searcy,  
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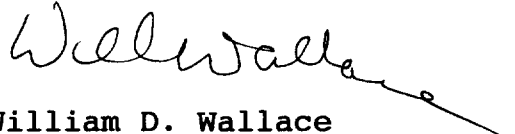
Re: CELSAT, Inc. Petition for Rulemaking (Docket RM-7927).

Dear Ms. Searcy:

Transmitted herewith on behalf of Loral Qualcomm Satellite Services, Inc. for filing with the Commission in the above-referenced docket are an original and four copies of its "Opposition to Petition for Rulemaking."

Should there be any questions regarding this matter, please contact this office.

Very truly yours,



William D. Wallace  
(Member of Florida Bar only)

Enclosures

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ORIGINAL

Before The  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of: )

Petition of CELSAT, Inc. for )

AMENDMENT OF PARTS 2, 22 & 25 )  
OF THE COMMISSION'S RULES )

RM-7927

For an Allocation of )  
Frequencies and Other Rules )  
for a New Nationwide Hybrid )  
Space/Ground Cellular Network )  
for Personal/Mobile )  
Communications Services )

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Federal Communications Commission  
Office of the Secretary

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

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April 8, 1992

## EXECUTIVE SUMMARY

CELSAT, Inc.'s Petition for Rulemaking should be dismissed or denied because its proposal is not in conformance with Commission Rules, moot, and contrary to the public interest. Celsat has attempted to propose amendments to the Table of Frequency Allocations for its "Hybrid Personal Communications Network." However, neither of its proposals is viable: use of its Band A has been foreclosed by action of the 1992 World Administrative Radio Conference; and Celsat is excluded from the current processing group for Band B by its failure to file an application by the June 3, 1991 cut-off date. Although Celsat has requested a waiver of the cut-off date, it has not provided the necessary justification for such a waiver, and, in any event, it has not even filed an application for which such a waiver could be granted. Therefore, Celsat has not proposed a viable spectrum plan for its system, and its petition should be dismissed.

Additionally, Celsat's proposed CELSTAR system is not viable because it does not currently have an agreement to use the CDMA technology developed by QUALCOMM, Inc., which technology appears to be what Celsat calls the "key" to its system. Other commercial and technical problems raise questions regarding the feasibility of Celsat's system. Celsat's failure to show the technical and commercial feasibility of its system also warrants dismissal or denial of its petition.

Moreover, Celsat's petition is defective on its face for failure to propose specific amendments to Part 22 of the

Commission's rules to accommodate the ground segment of its proposed system. Celsat also claims that its CELSTAR system must be licensed as a monopoly service provider which is inconsistent with the Commission's policies on open entry for satellite communications services and contrary to the public interest.

For the reasons discussed in this opposition, Celsat's Petition for Rulemaking should be dismissed or denied promptly.

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Before The  
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Federal Communications Commission  
Office of the Secretary

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for a New Nationwide Hybrid )  
Space/Ground Cellular Network )  
for Personal/Mobile )  
Communications Services )

RM-7927

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

Loral Qualcomm Satellite Services, Inc. (LQSS), by its attorneys, hereby requests that the Petition for Rulemaking filed by CELSAT, Inc. be promptly dismissed or denied as not in conformance with the Commission's Rules, moot, and contrary to the public interest.<sup>1/</sup> As an applicant for authorization to construct and operate a low-earth orbit satellite system using the RDSS bands to provide innovative radiolocation, voice and data services,<sup>2/</sup> LQSS has a substantial interest in the disposition of

<sup>1/</sup> Celsat's Petition was filed on February 6, 1992, and placed on Public Notice on March 9, 1992.

<sup>2/</sup> See Application of LQSS for a Low-Earth Orbit Satellite System, File Nos. 19-DSS-P-91(48) and CSS-91-014 (filed June 3, 1991).

Celsat's petition.<sup>3/</sup>

As discussed further below, Celsat's Petition is defective on its face, proposes a non-viable allocation of spectrum, and is inconsistent with the Commission's Rules and policies governing the provision of satellite and terrestrial mobile communications services. Therefore, the Commission should dismiss or deny the petition promptly without initiating a formal Notice of Proposed Rulemaking to consider Celsat's Petition.

I. BACKGROUND.

Celsat filed its petition for rulemaking requesting an allocation of spectrum to provide a service which it terms "Hybrid Personal Communications Network" (HPCN), a geostationary satellite and terrestrial cellular network for mobile voice, data and position location services. Celsat petitions the Commission to allocate 37 MHz in the S-band at 2110-2129 MHz for its downlink and 2410-2428 for its uplink, or alternatively, to allocate 32 MHz of spectrum currently allocated to RDSS (and MSS on a co-primary basis as a result of WARC-92) at 1610-1625.5 MHz for the uplink and 2483.5-2500 MHz for the downlink.

Celsat proposes to use spread spectrum CDMA technology to provide "HPCN" in either of these two sets of bands. It claims that it can make "maximum use of the best that that technology promises for the mobile market." Celsat Petition, at 15-16. It

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<sup>3/</sup> Celsat has proposed an allocation to it of spectrum in the L- and S-bands currently allocated for RDSS, for which LQSS has filed an application. Celsat also requests inclusion of its yet-to-be-filed application in the current RDSS processing group, of which LQSS is a member.

has also proposed various amendments to Parts 2 and 25 of the Commission's Rules to accommodate its proposed HPCN service, including a definition of HPCN, a relaxation in the Power Flux Density limits for HPCN, and some very minimal licensing provisions. See Celsat Petition, at Exhibit 2.

II. CELSAT'S PETITION SHOULD BE DENIED AS MOOT BECAUSE ITS PROPOSED SPECTRUM ALLOCATION PLANS ARE NOT FEASIBLE.

Celsat proposes that the Table of Frequency Allocations in Section 2.106 of the Commission's Rules be amended to allow for the provision of "HPCN" in either of two sets of bands:<sup>4/</sup>

	<u>Uplink</u>	<u>Downlink</u>
Band A:	2410-2428 MHz	2110-2129 MHz
Band B:	1610-1625.5 MHz	2483.5-2500 MHz

Because neither of these spectrum alternatives is available for licensing Celsat's proposed system, its Petition should be dismissed as moot under Section 1.401(e) of the Commission's Rules, which provides for dismissal of petitions for rulemaking which do not warrant further consideration. 47 C.F.R. § 1.401(e) (1991).

A. The S-Band in Celsat's Proposed Band A Is Not Available for Mobile Satellite Service.

Celsat proposes that the Commission allocate 37 MHz in the S-band at 2110-2129 MHz for the downlink and 2410-2428 for the

---

<sup>4/</sup> Celsat also identified the band at 1850 to 2200 MHz recently allocated for emerging technologies as potential spectrum for its system, Celsat Petition, at 4 n.2; however, its discussion focuses on development of its system with Band A or Band B.

uplink, based upon the Commission's proposal to the 1992 World Administrative Radio Conference (WARC-92) that these bands be used for generic mobile satellite services. Celsat Petition, at 4; see An Inquiry Relating to Preparation for the International Telecommunications Union World Administrative Conference, 6 FCC Rcd 3900 (1991).

However, these bands were not allocated for MSS on an international basis at WARC-92. In fact, in Region 2, the bands at 2110-2120 MHz and 2410-2428 MHz are not available for MSS, and the 2120-2129 MHz band may be used for MSS only on a secondary basis beginning October 12, 1993. See Addendum and Corrigendum to the Final Acts of World Administrative Radio Conference, at 18, 20. Celsat's Band A is not available for allocation to HPCN in the United States.

Celsat's Petition with respect to use of its Band A is therefore moot, and should be dismissed.

B. Celsat Is Precluded from Applying to Use the RDSS Spectrum Reservation and Has Failed to Justify a Waiver of the Commission's Cut-Off Rules.

For Plan B, Celsat proposes that the Commission allocate to HPCN 32 MHz of the spectrum currently allocated to RDSS (and MSS on a co-primary basis as a result of WARC-92) at 1610-1625.5 (uplink) and 2483.5-2500 MHz (downlink). However, a cut-off date of June 3, 1991, was established for applications for communications systems proposing use of this spectrum, which Celsat has missed by eight months. Although it requested a waiver of the Commission's cut-off rules, Celsat Petition, at 4, Celsat

provided no justification for such action. Accordingly, it cannot be included in the current application processing group for these frequencies.

The Commission's Public Notice announcing the cut-off date of June 3, 1991 for applications to use the RDSS spectrum was published on April 1, 1991, after applications were filed by Ellipsat Corporation and Motorola Satellite Communications, Inc. See Public Notice, 6 FCC Rcd 2083 (1991). On June 3, 1991, five additional applications for use of this spectrum were filed in response to the Public Notice, by AMSC Subsidiary Corporation, TRW, Inc., Ellipsat, Constellation Communications, Inc. and LQSS. These applicants have also filed petitions for rulemaking and requests for pioneer's preferences.

To the best of LQSS's knowledge, Celsat has not yet filed any application.

Section 25.141(b) of the Commission's Rules provides that applications for systems in the RDSS service be filed within a 60-day cut-off period. 47 C.F.R. § 25.141(b) (1991). Applications not filed in conformance with this cut-off date must be "dismissed as unacceptable for filing." Public Notice, 6 FCC Rcd at 2084.

The Commission's cut-off rules have long been recognized as an appropriate procedure to attract all applicants and allow the Commission to consider applications "with a single, fairly prompt comparative hearing." The Florida Institute of Technology v. FCC, 952 F.2d 549, 550 (D.C. Cir. 1992); see also RKO General, Inc., 89 FCC 2d 297, 320 (1982). While the Commission may not be able to

preclude applicants from filing after the cut-off date, the cut-off rules "provide a common sense approach to the question" of how to avoid delay which might otherwise be engendered by the potential for continual filings by late-comers. See RKO General, Inc., 89 FCC 2d at 320-21.

The Commission enforces these cut-off dates strictly even if there are harsh results. See FIT v. FCC, 952 F.2d at 550.

Indeed, the Commission has recognized in the context of its cut-off rules that it would be unfair to applicants who filed on time "to subject them to the additional burden of facing [another] contender . . . after having made these expenditures [of time and money] in reliance on the rule . . . limiting the number of applicants." Howard University, 23 FCC 2d 714, 176 (1970).

Celsat, however, has not even filed an application. It has not complied with the Commission's April 1, 1991 Public Notice. It would be unfair to LQSS (and others) at this late date to allow Celsat into the processing group. Moreover, there is no harsh result in excluding Celsat. Celsat has yet to file an application 10 months after the cut-off date, even though it has filed a petition for rulemaking and request for a pioneer's preference representing that it has a fully-developed system.

Recognizing this deficiency, Celsat requested a waiver of the June 3 cut-off date to allow its not-yet-filed application to be processed in the current group. Celsat Petition, at 4. Not only is there no application for which a waiver can be granted, but also Celsat has failed to provide any justification whatsoever for such a waiver. The Commission requires that "applicants seeking

waiver of Commission application filing deadlines demonstrate unusual and compelling circumstances for their waiver requests."

Waivers of Application Filing Deadlines, 58 RR 2d 1706, 1707 (1984); see also RKO General, Inc., 89 FCC 2d at 321 ("the courts and this Commission have long rejected routine waiver of the cut-off rules to permit the late filing of competing applications").

Celsat not only failed to provide any "unusual and compelling circumstances" which would meet the Commission's standard for granting a waiver of its cut-off rules, it has no application on file, and has identified no reason at all for such a request, let alone for grant of it. As the Commission adheres "strictly" to this standard, Waivers of Application Filing Deadlines, 58 RR 2d at 1707, Celsat is not entitled to a waiver.

Celsat's failure to file an application compounds the impossibility of allowing it access to the current RDSS-spectrum processing group. Without an application on file, the Commission and interested parties cannot review Celsat's legal and financial qualifications to hold a license if it were granted a waiver. Furthermore, it would be absurd to grant Celsat such a waiver and consider its application if its technical proposal is not feasible. Although Celsat's Petition provides some information on the CELSTAR proposal, it references Celsat's yet-to-be-filed application for critical technical information, precluding complete review of the CELSTAR proposal. See Celsat Petition, at 23, 33 and Appendix A, at A-1.

Celsat's request for waiver of the Commission's cut-off rules for use of the RDSS spectrum must be rejected. Not only would it

be contrary to Commission policy to grant such a waiver without any justification, it would be grossly unfair to subject other applicants to consideration of Celsat's yet-to-be-filed application. Celsat's proposal to use the RDSS band for its proposed HPCN being defective, its Petition with respect to Plan B spectrum should also be dismissed as moot.

III. CELSAT'S PETITION SHOULD BE DENIED BECAUSE ITS PROPOSED HPCN SERVICE IS NOT TECHNICALLY OR COMMERCIALY VIABLE.

Even if Celsat's proposed amendments to the Table of Frequency Allocations were feasible, its proposed "Hybrid Personal Communications Network" is neither commercially nor technically viable. Because Celsat cannot implement the proposal in its Petition, the Petition should be dismissed or denied.

A. Celsat Has No Rights To Use the CDMA Technology Which Is Critical to Implementation of Its Satellite System.

Much of Celsat's proposal apparently is based on the use in both its space and ground segments of CDMA technology, developed by QUALCOMM, Inc. one of the two shareholders in LQSS. For example, in describing itself as "wedded" to CDMA technology, Celsat states that the results of its analysis were confirmed by successful field trials of CDMA in San Diego. See Celsat Petition, at 22. These field trials in San Diego were conducted by QUALCOMM and associated companies.

However, Celsat does not have this technology available to it for CELSTAR. QUALCOMM does not have a licensing agreement or any

other agreement with Celsat, which would be required for Celsat to use QUALCOMM's CDMA technology.

In short, Celsat does not now have the right to use the CDMA technology essential to the operation of CELSTAR. Even if its petition were granted, it would not be able to construct and operate its proposed system. Therefore, its petition should be dismissed as moot.

B. Celsat's Technical Proposal Is Flawed, and the Proposed CELSTAR System Is Not Commercially Viable.

LQSS has conducted an initial review of Celsat's Petition and its Request for a Pioneer's Preference (filed February 10, 1992). An in-depth review of the CELSTAR proposal was not possible because Celsat has not yet filed an application for CELSTAR, and so, all the necessary technical detail is apparently not yet available.<sup>5/</sup> See Celsat Petition, Appendix A, at A-1 (referring to information in application). However, on the basis of its initial review,<sup>6/</sup> LQSS finds that the CELSTAR proposal is both technically and commercially flawed for at least the following reasons:

- With its current proposal, Celsat would not be able to serve subscribers of either existing cellular networks or emerging PCN systems. Celsat would be required to overbuild these networks in order to have a customer

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<sup>5/</sup> This is true even though Celsat said in its Petition that an application would be filed "contemporaneously." Celsat Petition, at 1.

<sup>6/</sup> LQSS reserves the right to file full comments on and to supplement these comments if Celsat files an application.

base sufficient to justify the financial outlay required for CELSTAR. Such an overbuild does not appear commercially viable.

- Celsat claims that its proposed system will provide more than 55,000 voice circuits in its first generation space system. Celsat Petition, at 3. However, Celsat does not explain how it will use these circuits. From comments made in its Request for a Pioneer's Preference, at 15 nn.12-13, it appears that Celsat proposes to use most of its space segment capacity to provide data circuits, and to rely on its ground segments to provide voice service. Celsat's proposed integrated "space/ground cellular network" would thus be nothing more than a conventional cellular system with satellite paging services.<sup>7/</sup>
- Celsat claims that it will be offering data services at rates up to 144 kilobits per second. Celsat Petition, Appendix A, at A-10. It also claims that the "basic modulation and multiple access protocol of the CELSTAR system is designed to fit exactly the emerging standards of CDMA ground cellular system." Id., at A-1. The emerging standard based upon QUALCOMM's CDMA system has a maximum data rate of 9.6 kilobits per second. Thus,

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<sup>7/</sup> This point illustrates the difficulty of analyzing Celsat's proposal without sufficient technical data, which it said would be provided in an application, and in the limited time for review resulting from the timing of comment on the Celsat Public Notice and denial of LQSS's request for an extension of time.

to the extent Celsat intends to offer higher data rates, its proposed system would be incompatible with the emerging CDMA digital cellular standard.

It is likely that additional technical and commercial reasons for rejecting Celsat's petition would be discovered if more information were provided on CELSTAR and more time were allowed for review of the proposal. However, the points noted above constitute sufficient reasons why the proposed CELSTAR system is not viable. Accordingly, it would be impractical and wasteful for the Commission to consider Celsat's Petition, and it should be promptly dismissed or denied.

IV. CELSAT'S PETITION IS DEFECTIVE ON ITS FACE FOR FAILURE TO PROPOSE RULES WHICH WOULD BE NECESSARY TO ACCOMMODATE ITS TERRESTRIAL SYSTEM.

Celsat proposes to integrate a mobile satellite communications system with terrestrial cellular service through use of the same frequencies for both ground and space communications. Celsat Petition, at 1-2. As Exhibit 2 to its Petition, Celsat identifies the proposed amendments to the Commission's Rules which it claims would allow it to provide this proposed service.

The rule changes proposed by Celsat, however, are only for Parts 2 and 25. Celsat has requested that it be authorized for what would become a nationwide cellular service, in direct competition with numerous current land mobile licensees, and, yet, it has proposed no rules or amendments for Part 22 such as would be necessary to accommodate Celsat's proposed terrestrial network

in the specified frequencies. Interested parties, particularly current or proposed licensees of land mobile radio systems, are not provided notice of what changes Celsat would require in Part 22, and consequently, how Celsat's proposed system would affect their systems. Section 1.401(c) of the Commission's Rules requires that petitions for rulemaking set forth the substance of all proposed rule changes. 47 C.F.R. § 1.401(c) (1991). Its failure to comply with Section 1.401(c) makes Celsat's Petition defective on its face.

In Exhibit 2 to its Petition, Celsat admits that it is not proposing any specific changes to Part 22. Celsat suggests that changes to rules not identified in its Petition should be left to the "general comment and reply process." Celsat Petition, at 49. Celsat ignores the fact that the purpose of this process is for interested parties to have notice of and comment on specific proposed rule changes, and that the Commission's Rules with respect to requests for rulemaking require specific rules to be proposed and rule amendments to be identified. 47 C.F.R. 1.401(c) (1991). The nebulous proposal of Celsat does not provide sufficient substance with respect to Part 22 in particular to make the notice and comment process meaningful.

Section 1.401(e) provides that the Commission may dismiss petitions for rulemaking which, as a result of various defects, do not warrant consideration. Under Section 1.401(e) and for the reasons discussed in this Opposition, Celsat's Petition does not warrant the expenditure of the Commission's and the public's time and resources which would be required for its consideration.

Accordingly, Celsat's Petition should be dismissed and no rulemaking with respect to it initiated.

V. THE RULE CHANGES CELSAT DOES PROPOSE TO ACCOMMODATE ITS MONOPOLY SERVICE PROPOSAL ARE INCONSISTENT WITH COMMISSION OPEN ENTRY POLICIES AND RULES ADOPTED FOR SATELLITE COMMUNICATIONS SERVICES.

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The Commission has long adhered to a policy of open entry in the satellite communications services. "Our experience with introducing competition into a variety of different communications services over the last several decades has been that the public benefits associated with competition, such as increased choices and lower prices for consumers, are more likely to be realized where there is competition among providers." Radiodetermination Satellite Service, 60 RR 2d 298, 305-06 (1986).

Celsat, in its Petition, makes clear that HPCN would be a monopoly. See Celsat Petition, at 43 ("Celsat submits that the Commission should adopt a policy of authorizing one and only entity to construct and operate a *hybrid personal communications network* with any single HPCN spectrum allocation"). Celsat also claims that licensing a monopoly service provider is required for technical reasons inherent in its HPCN proposal. Id. at 41.

Celsat states:

Fully functional, maximum capacity HPCNs must be constructed and operated as single, nationwide systems, each under the control of one licensee. . . . this is primarily for technical rather than purely economic reasons.

Celsat Request for a Pioneer's Preference, at 40 (footnote omitted) (filed February 10, 1992).

Celsat's demand to become a monopoly service provider is flatly inconsistent with the Commission's open entry policy for awarding satellite service licenses, and warrants rejection of the rule changes proposed to accommodate Celsat's monopoly system.

In addition, Celsat has proposed a system of "pseudo spectrum sharing" of satellite capacity with other service providers which the Commission has previously rejected in favor of licensing multiple service providers. Celsat proposes that the HPCN licensee offer rights to transponder capacity on an Indefeasible Right of Use basis to other entities. Celsat Petition, at 46-49.

In a prior RDSS licensing proceeding, Omninet Corporation similarly proposed a system which was technically incompatible with other applicants, so that granting its application would have given Omninet a monopoly. Radiodetermination Satellite Service, 60 RR 2d at 303. Like Celsat, Omninet suggested that "multiple entry may be achieved by authorizing one coordinated satellite system to be shared by multiple providers with separate ground segments and marketing mechanisms." Id. (footnote omitted).

The Commission flatly rejected this proposal, pointing out that the public benefits associated with competition arise only when there are "independently operating" systems. Id. at 303-04. Like the Omninet proposal, Celsat's anti-competitive proposal should be rejected. Neither time nor technology have changed the Commission's finding that several independent systems will provide to the public the benefits of competition rather than one service provider which sells capacity to others. Because Celsat's Petition proposes a system rejected by the Commission as not in

the public interest and inconsistent with the Commission's multiple entry licensing policies for satellite communications services, the Commission should dismiss the petition as defective.

VI. CONCLUSION.

For the reasons outlined above, LQSS requests the Commission to find Celsat's Petition for Rulemaking moot, technically and commercially impractical, and otherwise contrary to the public interest, and to dismiss or deny the Petition without further consideration.

Respectfully submitted,

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Dated: April 8, 1992

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 8th day of April, 1992, caused copies of the foregoing "Opposition to Petition for Rulemaking" to be served by hand delivery (as indicated with \*) or by U.S. mail, postage prepaid, to the following:

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